

Exhibit B

(Part 1 of 2)

The Ex Parte Application of B&C KB Holding GmbH

Michael Dees
December 19, 2024

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IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

IN RE MATTER OF THE EX PARTE)
APPLICATION OF B&C KB HOLDING)
GMBH FOR AN ORDER TO TAKE) Case No.
DISCOVERY PURSUANT TO 28 U.S.C.) 22-MC-180
§ 1782 FROM GOLDBERG LINDSAY &)
CO. LLC D/B/A LINDSAY GOLDBERG)
AND MICHAEL DEES,)

VIDEO-RECORDED DEPOSITION OF MICHAEL DEES

New York, New York

Thursday, December 19, 2024

Reported by:
Jeffrey Benz, CRR, RMR
Job No. 965979

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2 VIDEO-RECORDED DEPOSITION of MICHAEL DEES,
3 taken at the offices of Kobre & Kim LLP, 800 Third
4 Avenue, New York, New York, on December 19, 2024,
5 commencing at 1:06 p.m., before Jeffrey Benz, a
6 Certified Realtime Reporter, Registered Merit
7 Reporter and Notary Public within and for the
8 State of New York.
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A P P E A R A N C E S: (Ctd.)

ALSO PRESENT:

INGRID RODRIGUEZ, Videographer

THOMAS ZIMPFER

23

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Michael Dees
December 19, 2024

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WITNESS DIRECTED NOT TO ANSWER;

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1 THE VIDEOGRAPHER: We are now on the
2 record. My name is Ingrid Rodriguez. I'm a
3 videographer retained by Lexitas.

4 This is a video deposition for the United
5 States District Court, Southern District of
6 New York.

7 Today's date is December 19, 2024, and the
8 time is 1:06 p.m. This deposition is being
9 held at Kobre & Kim, LLP, New York, New York,
10 in re -- In Re Matter of the Ex Parte
11 Application of B&C Holding -- KB Holding GmbH
12 for an Order to take Discovery Pursuant to
13 28 U.S.C. 1782 from Goldberg Lindsay & Co. LLC,
14 d/b/a Lindsay Goldberg and Michael Dees.

15 The deponent is Michael Dees. All parties
16 will be noted on the stenographic record. The
17 court reporter is Jeff Benz, and will now swear
18 in the witness.

19 MICHAEL DEES,

20 called as a witness, having been first
21 duly sworn by Jeffrey Benz, a Notary
22 Public within and for the State of New
23 York, was examined and testified as
24 follows:
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1 you have a right, under the United States
2 Constitution, not to incriminate yourself?

3 MR. LEON: Objection. Asked and answered.

4 Q. You can answer.

5 A. On the advice of counsel, I will not
6 answer.

7 Q. Okay. You joined Lindsay Goldberg in
8 2004. Do I have that right?

9 A. Yes.

10 Q. And before that, you were a banker with
11 Morgan Stanley. Do I have that right?

12 A. I was an employee of Morgan Stanley.

13 Q. What -- what did you do at Morgan Stanley?

14 A. I worked in the private equity division.

15 Q. And you wouldn't call yourself a banker at
16 Morgan Stanley?

17 A. Not prior to my time at Lindsay Goldberg.

18 Q. Okay. You became a partner at Lindsay
19 Goldberg in 2008. Do I have that right?

20 A. Yes.

21 Q. And in 2020, you became the managing
22 partner for Lindsay Goldberg. Is that right?

23 MR. LEON: Object to form.

24 A. I became a managing partner at
25 Lindsay Goldberg.

1 Q. And in -- so we're clear on the record --
2 and I think you and I have a common understanding,
3 but we'll -- we'll try to establish that.

4 When I say "Lindsay Goldberg" in this
5 context, I'm talking about Goldberg Lindsay & Co.,
6 LLC, that does business as Lindsay Goldberg. Is
7 that the same understanding you have?

8 A. Yes, it is.

9 Q. And that's where you've been employed
10 since 2004.

11 A. Yes, it is.

12 Q. And that is where you are a managing
13 partner, correct?

14 A. Yes.

15 Q. What is a managing partner at
16 Lindsay Goldberg?

17 A. Managing partner is a -- executive who
18 manages the investment team.

19 Q. How many managing partners are there at
20 Lindsay Goldberg?

21 A. There are two.

22 Q. Who are they?

23 A. Myself and Russell Friedman.

24 Q. Prior to you becoming a managing partner
25 in 2020, who was the managing partner or partners?

1 Q. Do you report to either Mr. Lindsay or
2 Mr. Goldberg in your capacity as managing partner?

3 A. I report to Mr. Goldberg.

4 Q. Have you reported to Mr. Goldberg since --
5 consistently since you became a partner at
6 Lindsay Goldberg in 2008?

7 A. Yes.

8 Q. In 2016, a -- a fund that is managed by
9 Lindsay Goldberg acquired an entity called Schur
10 Flexibles. I'll -- I'll say it generally and then
11 we could -- we could get to the agreement on terms
12 as we go. But as a general matter, is that
13 statement correct?

14 MR. LEON: Object to form.

15 A. Yes, it is.

16 Q. Okay. And in -- and if I have this right,
17 Schur, when -- when it was acquired, was acquired in
18 part by entities that are ultimately owned by a fund
19 called Fund IV that's managed by Lindsay Goldberg?
20 Do I have that right?

21 If you know.

22 A. That would be a shortened form of it.

23 Q. Okay. And in terms of the
24 Lindsay Goldberg side of the acquisition, what was
25 your involvement, if any, in the process of deciding

1 to acquire an interest in Schur?

2 A. With respect to the decision to acquire
3 Schur, I was a member of the investment committee
4 that approved the transaction.

5 Q. Were you -- and I'll use this term
6 colloquially, and in -- again, it's your testimony,
7 so I want to make sure we get to terms we agree on,
8 were you the deal team lead for that acquisition?

9 MR. LEON: Object to form.

10 Q. You can answer.

11 A. Yes, I was.

12 Q. And I want to break down those two
13 responsibilities. In the -- in the period prior to
14 the acquisition, what is -- what was your function
15 as deal team lead?

16 A. I oversaw the internal team's diligence of
17 the transaction. I oversaw the -- I oversaw our
18 team which oversaw a number of the advisors with
19 respect to the transaction.

20 Q. And what was your role on the investment
21 committee?

22 A. I was one of the members of the investment
23 committee who voted for or against the transaction.

24 Q. Who were the other members, if you recall,
25 of the investment committee in 2016?

22

1 A. I don't recall all of them. It would
2 likely have included Mr. Goldberg, and other
3 partners of its firm.

4 Q. And subsequent to the acquisition, after
5 the acquisition was made, what was your
6 responsibility as deal team lead during that period?

7 A. I no longer had a role as deal team lead
8 after the acquisition.

9 Q. Okay. Did you have a role with respect to
10 the investment other than that in your capacity as
11 investment committee member after the acquisition?

12 A. I was a member of the advisory board for
13 Schur.

14 Q. For internal purposes, were you designated
15 in any capacity as being responsible for
16 Lindsay Goldberg's investment in Schur?

17 MR. LEON: Object to form.

18 A. Was no formal designation.

19 Q. Okay. But you said you were appointed to
20 Schur's -- and we can get -- we'll get into the
21 specific entities, but to your understanding,
22 Schur's advisory board after the acquisition,
23 correct?

24 A. Correct.

25 Q. And as I understand it, this -- the

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1 investment that was made by the fund managed by
2 Lindsay Goldberg in Schur was sourced by
3 Lindsay Goldberg Vogel. Do I have that right?

4 A. Yes.

5 Q. And when I say "sourced," and you agree
6 with me, what -- what do you understand "sourced" to
7 mean in that context?

8 A. They were the first party that was
9 contacted about the potential acquisition.

10 Q. And as I understand it from some public
11 information, prior to the year 2020, Alan Goldberg
12 and Robert Lindsay held a 20 percent interest in
13 Lindsay Goldberg Vogel. Is that your understanding?

14 MR. LEON: Object to form.

15 A. I don't know if they personally held a
16 20 percent stake.

17 Q. Have you ever heard that before me saying
18 it today?

19 A. No, I have not.

20 Q. Do you know what the relationship between
21 Lindsay Goldberg, as we have said, and
22 Lindsay Goldberg Vogel was at the time of the
23 acquisition?

24 A. Yes.

25 Q. What was the relationship?

1 A. Lindsay Goldberg Vogel served as a
2 consultant to Lindsay Goldberg and its funds with
3 respect to investments in Europe.

4 Q. Did -- do you understand whether -- apart
5 from Alan Goldberg and Robert Lindsay, whether
6 Lindsay Goldberg, the Lindsay Goldberg we have been
7 talking about, prior to 2020, or during 2020, had an
8 ownership interest in Lindsay Goldberg Vogel?

9 A. I believe it did.

10 Q. How much was -- to your understanding was
11 that ownership interest?

12 A. I don't recall.

13 MR. ROSENBAUM: Okay. Let's mark 45?

14 This is Dees 1.

15 (Dun & Bradstreet Credit Report dated as
16 of April 17, 2022 was marked Dees Exhibit 1 for
17 identification, as of this date.)

18 Q. Showing you what has been marked as Dees 1
19 for identification. And I'll note for the record
20 this is a Dun & Bradstreet Credit Report that is
21 dated as of April 17, 2022, and it was filed with
22 the Court in the 1782 proceeding that we're here for
23 regarding deposition. I would ask Mr. Dees that you
24 turn to page 9 of 15, looking at the upper
25 right-hand corner.

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1 Have you seen this document before today?

2 A. I don't recall.

3 Q. Let's turn to the bottom right-hand
4 corner, page 14605 first.

5 Does this refresh your recollection as to
6 who the CEO was of Schur upon acquisition?

7 A. It does.

8 Q. Okay. And that's Mr. Jakob Mosser, as --
9 as you said you thought, correct?

10 A. Correct.

11 Q. Did you understand him also to be the
12 founder of Schur?

13 A. That was my recollection.

14 Q. Okay. Let's turn further in, but actually
15 looking at this page, do you see, in faint font, it
16 says, "Lindsay Goldberg Vogel" across that page?

17 A. Page 5, you're saying?

18 Q. Yeah, if you look -- if you look in very
19 faint font.

20 You see that?

21 A. Yes, I do.

22 Q. If you turn further to page 14610, a page,
23 further bottom right-hand corner. Let me know when
24 you're there.

25 A. I'm here.

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1 Q. Okay.

2 And the first bullet under "Situation
3 Overview," it says, LGV -- you understand that to be
4 Lindsay Goldberg Vogel, correct?

5 A. Correct.

6 Q. -- met with the management team in late
7 March, and following this meeting, we believe that
8 an acquisition of Schur could be an interesting
9 opportunity for LG.

10 And under that, it says, Very capable
11 CEO/founder, who has aggressive ambitions with
12 respect to growth.

13 You understand that CEO/founder to be
14 Mr. Mosser, correct?

15 A. I do.

16 Q. Do you have any reason to doubt that LGV
17 met with the management team of Schur in March of
18 2016 and formed that view?

19 A. I have no reason to doubt what I read
20 here.

21 Q. And do you recall that being the case
22 based on the work you did prior to the Schur
23 acquisition by Lindsay Goldberg?

24 MR. LEON: Object to form.

25 A. I recall that they met with the management

1 team. I do not recall, other than reading this, the
2 date of that -- that meeting.

3 Q. Do you recall that they found the CEO to
4 be very capable? Yes or no.

5 MR. LEON: Object to form.

6 A. I don't recall.

7 Q. And if you look down further, it says, We
8 believe that this is a situation where LG can be
9 successful in the transition process.

10 You see that?

11 MR. LEON: I think you misread the
12 document.

13 A. It said --

14 Q. We believe that --

15 A. -- transaction process.

16 Q. Oh. Let me -- I keep doing this. But
17 we're on the same bullet. We believe that this
18 situation -- this is a situation where LG can be
19 successful in a transaction process.

20 You see that?

21 A. I do.

22 Q. And the bullet beneath that says,
23 Founder/CEO is critical to success of the company.

24 And it goes on.

25 Any reason to doubt that you were

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1 presented with that view in 2016, prior to the
2 acquisition of Schur?

3 A. There's no reason to doubt I was presented
4 this document on the date I was provided it.

5 Q. And you have no reason to doubt, I take
6 it, that that was a view formed by LGV in the
7 diligence it was doing, correct?

8 A. I have no reason to doubt it was the view
9 on the date they produced this document.

10 Q. Now, you mentioned that you became a
11 member of the advisory board of Schur after the
12 acquisition we've been speaking of, and again, just
13 as a frame of reference, in 2016. Correct?

14 A. Yes.

15 MR. ROSENBAUM: Let's go to...

16 (Fund IV structures chart was marked Dees
17 Exhibit 3 for identification, as of this date.)

18 Q. Showing you what has been marked for
19 identification as Dees Exhibit 3. This document
20 familiar to you?

21 A. No, it is not.

22 Q. Well, are entities identified in this
23 document familiar to you?

24 A. Yes, they are.

25 Q. So if you see, on top, the very top, it --

1 it says, Fund IV Schur Flexibles Structure Chart,
2 April 7, 2021.

3 You see that?

4 A. I do.

5 Q. Do you understand this document to reflect
6 Fund IV Schur Flexibles structure?

7 MR. LEON: Object to form.

8 A. I -- I can only -- I'm simply reviewing
9 the document.

10 Q. You can review it. Take your time.

11 But I want to know if you -- looking at
12 the document, you understand it to reflect the
13 Fund IV Schur Flexibles ownership structure.

14 MR. LEON: Object to form.

15 A. I -- I have no reason to believe it's not
16 the structure chart in April 7, 2021.

17 Q. Okay. Now, looking down into the middle
18 of the document, and I know that's kind of a rough
19 term, but we'll make sure we orient ourselves and
20 get the same place -- do you see a company called
21 Atlas Flexibles Coöperatief U.A. (Netherlands)?

22 A. I do.

23 Q. Are you familiar with that entity?

24 A. I am.

25 Q. What is that entity?

1 A. That entity is a shareholder in Atlas
2 Flexibles GmbH.

3 Q. And are you a director of Atlas Flexibles
4 Coöperatief?

5 A. Today I'm not.

6 Q. Were you in the past a director of Atlas
7 Flexibles Coöperatief?

8 A. I believe I was a manager, which may be a
9 similar term.

10 Q. From when to when were you a manager of
11 Atlas Flexibles Coöperatief?

12 A. I don't recall the exact dates.

13 Q. Was it during the period that
14 Lindsay Goldberg Fund IV held an interest in Schur,
15 if you recall?

16 A. I believe it was.

17 Q. All right. We can refresh with documents
18 later.

19 But just so I have your memory, you
20 believe you were a manager of Atlas Flexibles
21 Coöperatief during the period that Lindsay Goldberg
22 Fund IV owned indirectly Schur Flexibles, correct?

23 A. To my knowledge, I was.

24 Q. And if we skip an entity and we go down to
25 Schur Flexibles GmbH, do you have an understanding

1 of what that entity is?

2 A. I believe it was the entity that owned all
3 the various Schur entity -- holding companies.

4 Q. And beneath that is an entity called Schur
5 Flexibles Holding GesmbH. You see that?

6 A. I do.

7 Q. Okay. When we talk about Schur and you
8 being on the advisory board, what entity were you on
9 the advisory board of?

10 A. I -- I don't recall which of the entities
11 I was.

12 (Shareholders resolution of Schur
13 Flexibles GmbH with corporate seat in Berlin
14 was marked Dees Exhibit 4 for identification,
15 as of this date.)

16 Q. Showing you what's been marked as Dees 4
17 for identification. Let me know when you're there.

18 (Witness reviewing document.)

19 Q. Does this document refresh your
20 recollection -- feel free to review it -- regarding
21 the entity that you were an advisory board member of
22 in the Schur family of companies?

23 A. It does.

24 Q. And which -- which company is that?

25 A. Schur Flexibles GmbH.

1 Q. So does this refresh your memory as to
2 what entity you were a member of the advisory board
3 of within the Schur family of companies?

4 A. It does.

5 Q. And what company is that?

6 A. Schur Flexibles Holding GesmbH.

7 Q. And the date of this resolution, it
8 appears, is January 25, 2017. Do I have that right
9 using the European convention for numerical dates?
10 Right, on page 2?

11 A. On page 3?

12 Q. I'm on page 2.

13 A. Okay. Yes, that's my understanding of the
14 date.

15 Q. So your understanding is that starting on
16 January 25, 2017, you were a member of the advisory
17 board for Schur Flexibles Holdings GesmbH, correct?

18 A. Based on that document, this is my
19 understanding.

20 Q. Is that consistent with your recollection?

21 MR. LEON: Object to form.

22 Q. You can answer.

23 A. Before I saw this document, I did not
24 recall the date.

25 Q. And you were appointed to that position on

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1 the advisory board along with a Dr. Dieter Vogel.

2 Who is that?

3 A. Dieter Vogel is a German executive who was
4 part of Lindsay Goldberg Vogel.

5 Q. And also you were appointed to that
6 position with Dr. Thomas Ludwig, and he's the person
7 you mentioned earlier as also associated with
8 Lindsay Goldberg Europe or Vogel, whichever way
9 we're calling it, correct?

10 A. Correct.

11 Q. So as far as you're concerned, or -- now
12 at least as of February 2017, the three members of
13 the Schur Flexibles Holding GesmbH advisory board
14 were you, Mr. Vogel and Mr. Ludwig, correct?

15 A. That was the date -- as of the date of
16 this document, that is correct.

17 Q. Did the composition of the advisory board
18 change subsequent to this date but prior to Lindsay
19 Goldberg selling an interest in Schur to B&C?

20 A. Yes.

21 Q. How did it change?

22 A. Dr. Dieter Vogel retired and he was no
23 longer on the advisory board.

24 Q. Were any other appointees made to the
25 advisory board that you recall in that period?

1 A. I believe that Mr. Thomas Unger was
2 appointed to the board.

3 Q. Anyone else?

4 A. I'm not certain if anyone else was.

5 Q. But so I have this right, during the --
6 the period between the date of this resolution,
7 which is late January 2017, and the sale of an
8 interest in Schur to B&C, your understanding is that
9 the composition of the advisory board was you and
10 Mr. Ludwig the whole time, correct?

11 A. That's not what I said.

12 Q. Did Mr. Ludwig step off the board?

13 A. No, he did not.

14 Q. I may have asked the question in an odd
15 way. What I'm -- what I'm trying to understand is,
16 other than you, Mr. Vogel, and Mr. Unger, along with
17 Mr. Ludwig, were there any other members at any
18 period in that time frame that I just described of
19 the advisory board that you're aware of?

20 MR. LEON: Object to form.

21 A. I don't recall if there were.

22 Q. So you don't know one way or the other?

23 A. I -- I just said that I do not know.

24 Q. Do you -- you don't recall if there were
25 more than three members at any given time?

1 A. I don't recall if there were more than
2 three members.

3 Q. Do you recall whether anyone other than
4 someone associated either with Lindsay Goldberg or
5 Lindsay Goldberg Europe was ever on the advisory
6 board for the Schur entity you just identified
7 during the period we just discussed?

8 MR. LEON: Object to form.

9 A. I can't recall anyone that wasn't in
10 Lindsay Goldberg or Lindsay Goldberg Europe being on
11 the advisory board.

12 Q. Your memory is that during that period,
13 January 2017 till about September 2021, the advisory
14 board of Schur Flexibles Holding GesmbH always was
15 comprised of employees of either Lindsay Goldberg or
16 Lindsay Goldberg Europe, correct?

17 A. Correct.

18 Q. And you don't recall anyone that was not
19 an employee of either Lindsay Goldberg or Lindsay
20 Goldberg Europe being on the advisory board during
21 that period, correct?

22 A. Correct.

23 Q. This was not the only advisory board that
24 you served on with respect to a European company; is
25 that correct?

1 whether it's seven or four, depending on whether
2 it's seven to ten, were U.S., or were they located
3 outside the U.S.?

4 A. They were primarily U.S.

5 Q. What did you do to familiarize yourself
6 with the responsibilities of an advisory board
7 member for Schur?

8 MR. LEON: Object to form.

9 A. I had served on advisory boards for the
10 last 20 years. I had experience and I used that
11 experience to inform my service on the advisory
12 board.

13 Q. Other than having experience on other
14 advisory boards, did you do anything in particular
15 with respect to the Schur advisory board to
16 familiarize yourself with your obligations in that
17 role?

18 A. I did not.

19 Q. You -- you understand, though, that there
20 were rules of procedure governing both the
21 management board and the advisory board for Schur,
22 correct?

23 A. Correct.

24 Q. And you reviewed those rules of procedure,
25 I take it?

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1 in your capacity as advisory board member --

2 MR. LEON: Object --

3 Q. -- correct?

4 MR. LEON: Object to form.

5 A. I did, based on -- I did based on the
6 signature here.

7 Q. So, appended to the document as
8 Schedule 2, you'll see the rules of procedure for
9 the management of Schur Flexibles Holding GesmbH,
10 the company.

11 Let me know when you're there. It starts
12 in the lower right-hand corner, page 8. The lowest
13 part of the right-hand corner.

14 A. I see that.

15 Q. Okay. And there's also -- just so we keep
16 a clear record -- a page 1 of 9 just above that.

17 You see that?

18 A. Correct.

19 Q. So these are the rules of procedure for
20 the management of the company that you were an
21 advisory board member as of the date that you signed
22 this resolution. Correct?

23 A. It appears to be, yes.

24 Q. I imagine, then, you familiarized yourself
25 with these rules of procedure in your capacity as

1 advisory board member, correct?

2 MR. LEON: Object to form.

3 A. I reviewed them prior to signing the
4 document.

5 Q. And now look, if you turn into -- it's
6 page 4 of 9, or 11, Section 7. Let me know when
7 you're there.

8 A. Section 7. Oh, okay, I'm there.

9 Q. This is information of the advisory board.
10 That's the advisory board that you are a member of.

11 You see that?

12 A. I see that it's the information of the
13 advisory board.

14 Q. And it continues, in Section 1, The
15 management board, via the chairperson of the
16 management board, shall inform the advisory board of
17 the company regularly, promptly, and comprehensively
18 of all issues of relevance to the company and all
19 direct and indirect subsidiaries, relating to
20 planning, business development, the risk situation,
21 and the risk management.

22 You read and understood that provision,
23 correct?

24 A. As I read it now, I understand that.

25 Q. And you would have read it at the time

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1 that you signed the resolution, correct?

2 A. I -- I can't recall if I read this
3 paragraph.

4 Q. But you -- you do recall that you read the
5 rules of procedure. Right?

6 A. I recall that I reviewed the rules of
7 procedure.

8 Q. Section 2 says, The management board, via
9 the chairperson of the management board, shall
10 inform the advisory board in particular of -- and
11 you see A?

12 It says, Actions for which consent of the
13 advisory board is required, usually in writing, and
14 sufficient time to allow the advisory board
15 sufficient time to consider the decision.

16 You read and understood that provision of
17 this document at the time you executed the
18 resolution. Fair?

19 A. I --

20 MR. LEON: Object to form.

21 A. I don't recall reading it at this time.

22 Q. Okay.

23 A. At that -- at that time.

24 Q. So, I'm going to tick through a few more
25 of these just so I have your testimony.

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1 You do recall that you reviewed these
2 rules of procedure when you signed the board
3 resolution that's marked as Dees 5, correct?

4 A. Correct.

5 Q. And you have no doubt that you understood
6 them at the time. Correct?

7 A. I said I reviewed them at the time.

8 Q. Did you ask any questions about them?

9 A. I don't recall.

10 Q. Okay. Would it be your practice to ask
11 questions about something you don't understand?

12 MR. LEON: Object to form.

13 A. It would be.

14 Q. And you don't recall having asked any
15 questions about the rules of procedure at that time.
16 Correct?

17 A. I don't recall.

18 Q. Let's go to page 5 of 9.

19 Paragraph 3 says, Irrespective of any
20 statutory duties to provide information, the
21 management board, via the chairperson of the
22 management board, is obligated to forward the
23 following information to the advisory board, and it
24 then identifies certain information.

25 You see that provision?

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1 A. I do.

2 Q. Under C, No later than ten business days
3 before the end of each fiscal year, a draft annual
4 budget for the following year defined as "budget,"
5 for consent by meeting of the shareholders. The
6 budget for the following financial year must include
7 monthly plans for profit and loss, cash flow,
8 income, expenditure, and cash.

9 And it continues.

10 You see that?

11 A. I do.

12 Q. Okay. So you understood, as an advisory
13 board member, that within ten days prior to the end
14 of each financial year, the chairperson of the
15 management committee was required to provide you and
16 the other advisory board members the budget, as
17 described in this document. Fair?

18 A. I don't recall if I remember that.

19 Q. You don't recall now if you remembered it?
20 Either you remember it or you don't. Do you
21 remember --

22 A. Now --

23 Q. -- this was an obligation?

24 MR. LEON: Let -- let him finish the
25 convoluted question.

1 A. Right now, I don't recall if that was an
2 obligation.

3 Q. But you have no -- you don't disagree that
4 that was an obligation of the management board.
5 Correct?

6 MR. LEON: Object to form.

7 A. I -- I'm -- I'm reading the same document
8 you put before me.

9 Q. I understand, but I wasn't on the board,
10 you were.

11 Did you understand, as an advisory board
12 member, that this -- that it was an obligation of
13 the chairperson of the management board to provide
14 advisory board members with a budget as described in
15 this document?

16 A. I don't recall if I had that
17 understanding.

18 Q. But you -- again, but you read this
19 document before you signed the resolution, right?

20 A. Yes.

21 Q. Let's go to Section 8 of this document.

22 Under the heading "Annual Planning and
23 Risk Management Personnel Planning." Number 2.

24 It says, the management board, via the
25 chairperson of the management board, shall submit to

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1 the advisory board, at least ten days before the end
2 of each fiscal year, the budget of the company
3 approved by the entire management board for the
4 following fiscal year, including a shortened plan
5 for the following two fiscal years, as well as risk
6 concept for hedging transactions in foreign
7 currencies.

8 Is your understanding that that was an
9 obligation of the management -- the chairperson of
10 the management board at Schur, at least from May of
11 2019 forward?

12 A. I don't recall.

13 Q. 3. The management board will coordinate
14 the personal -- personnel planning with the advisory
15 board as part of an annual personnel meeting in the
16 third quarter of the -- of the financial year.

17 See that?

18 A. I see that.

19 Q. Did the management board coordinate with
20 the advisory board an annual personnel meeting for
21 the third quarter of the financial year 2019?

22 MR. LEON: Object to form.

23 A. I don't recall. I don't recall.

24 Q. You don't disagree that that was a
25 requirement of the management board, per the rules

1 of procedure. Correct?

2 A. I don't disagree that it states in this
3 document that was a requirement.

4 Q. And this document continues in that same
5 paragraph, For this purpose, information on
6 remuneration needs to be provided and an assessment
7 of succession planning prepared in each case. The
8 management board will submit salary ranges for this
9 employee group for consent in the personnel meeting.

10 Did that happen in 2019?

11 A. I don't recall.

12 Q. Did that happen in 2020?

13 A. I don't recall.

14 Q. Let's go to Section 9.

15 Acts required consent, right of
16 instructions.

17 You see that?

18 A. I see that.

19 Q. And it says, The management board required
20 the consent of the advisory board for the
21 implementation of the following measures and
22 transactions, or the assumptions of -- the
23 assumption of obligations for the implementation of
24 such measures and transactions by the company and
25 all direct and indirect subsidiaries. In

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1 particular, consent is required in the following
2 cases.

3 MR. LEON: Why don't you take a minute,
4 review the entire --

5 Q. You can read it.

6 MR. LEON: -- review the entire section.

7 Q. Take your time.

8 MR. LEON: It goes on for a couple pages.

9 A. Okay.

10 Q. Section 9.

11 (Witness reviewing document.)

12 Q. You've read all of Section 9?

13 A. I've read it quickly.

14 Q. And under the paragraph I just read out
15 loud, A says, Determination of the budget, capital
16 B, as well as determination and/or changes of the
17 accounting and valuation policy.

18 You see that?

19 A. I do.

20 Q. So the determination of the budget that we
21 just discussed under Section 7 was -- required the
22 consent of the advisory board under the rules of
23 procedure that you and the other advisory board
24 members enacted per this resolution, correct?

25 MR. LEON: Object to form.

1 A. Based on my review of this, it does.

2 Q. If you go down to J -- I'm not going to go
3 through every single one.

4 You read that as part of your review a few
5 moments ago?

6 A. I did.

7 Q. Okay. So assumption for granting of
8 loans, including financial leases, issuance of
9 bonds, and it continues.

10 As well as other measures of corporate
11 finance, insofar as these exceed the amount of
12 1 million euro in the fiscal year, that required
13 consent and approval of the advisory board, correct?

14 A. Correct.

15 Q. If you go down to M, M as in man,
16 Unbudgeted investment projects of more than 250,000
17 each, as well as if already included in the budget,
18 the assumption of liability in connection with an
19 investment project of at least 1 million euro, that
20 required approval and consent by the advisory board,
21 correct?

22 A. Correct.

23 Q. And, O, Conclusion of consultancy
24 agreements, with the exception of personnel
25 consultants, with an annual payment obligation

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1 towards the respective consultant of more than
2 200,000 altogether per financial year, that required
3 consent and approval by Schur's advisory board,
4 correct?

5 A. Correct.

6 MR. ROSENBAUM: Probably a good time for a
7 break. I'm going to switch subject matters,
8 and we've been going for more than an hour.

9 MR. LEON: Great.

10 THE VIDEOGRAPHER: The time right now is
11 2:17 p.m. We're off the record.

12 (A recess was taken from 2:17 to 2:30.)

13 THE VIDEOGRAPHER: The time right now is
14 2:30 p.m. We are back on the record.

15 (Email from Mr. Dees to Alan Goldberg
16 dated March 29, 2016 was marked Dees Exhibit 6
17 for identification, as of this date.)

18 Q. Good afternoon again, Mr. Dees. In the
19 earlier session, I asked you some questions about
20 the views of Mr. Mosser prior to the Lindsay
21 Goldberg acquisition of Schur. Do you recall that?

22 MR. LEON: Object to form.

23 Q. Do you recall giving testimony about
24 Mr. Mosser earlier today?

25 A. I recall discussing Mr. Mosser over the

1 Q. And so let's go to the bottom right-hand
2 corner, page 19733. Let me know when you're there.

3 We're on the same page, 19733?

4 A. Yes.

5 Q. The first bullet, it says, Ludwig/Pruss
6 met with management team last week, and following
7 this meeting we believe that an acquisition of Schur
8 could be an interesting situation for LG.

9 In the very first bullet, it says, Very
10 capable CEO founder who has aggressive ambitions
11 with respect to growth.

12 The very capable CEO founder was
13 Mr. Mosser, correct?

14 A. Yes.

15 Q. And if you go down to the second bullet
16 that's colored in, about two-thirds of the way down
17 the page, it says, We also believe that this is a
18 situation where LG can be successful in a
19 transaction process.

20 You see that?

21 A. I do.

22 Q. Okay. And the first bullet underneath
23 that, it says, Founder/CEO is critical to the
24 success of the company, and he appears to be the key
25 decision-maker with respect to the new investor.

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1 That founder/CEO was Mr. Mosser, correct?

2 A. Yes.

3 Q. Okay. So is it fair to say that since you
4 told Mr. Goldberg that you had prepared this
5 document, that you agreed with that view at the time
6 you sent this document to Mr. Goldberg?

7 MR. LEON: Object to the form of the
8 question.

9 A. It's fair that I wrote this on the date I
10 sent the document.

11 Q. And if you wrote it, you would agree that
12 you would -- you found that view persuasive,
13 correct?

14 MR. LEON: Object to form.

15 A. I said I -- I -- I wrote this on this
16 date.

17 Q. Things with Mr. Mosser didn't turn out
18 that well, did they?

19 MR. LEON: Object to form.

20 A. Could you be more specific?

21 Q. Well, you fired him, didn't you?

22 A. He was either -- he was no longer CEO. I
23 don't recall if he resigned or was terminated.

24 Q. Okay. Were you part of the decision under
25 which he no longer was CEO?

1 A. Yes.

2 Q. When did -- well, let me back up.

3 Are you familiar with someone by the name
4 of Thomas Unger?

5 A. Yes.

6 Q. When did you first meet Mr. Unger?

7 A. I met him at some time during 2016.

8 Q. And if I have this right, Mr. Unger became
9 a managing director at Lindsay Goldberg Europe,
10 correct?

11 A. I -- it may have been Lindsay Goldberg
12 Vogel at the time.

13 Q. Okay.

14 A. I'm not sure.

15 Q. Mr. Unger played a role in the Schur
16 acquisition. Do I have that right?

17 A. Prior to the Schur acquisition he served
18 as a consultant.

19 Q. And after the Schur acquisition, did
20 Mr. Unger play a role with respect to the Schur
21 investment?

22 A. He did.

23 Q. Before February or -- I'm sorry, before
24 2016, did you know Mr. Unger?

25 A. I did not.

1 A. I believe we signed it in the middle of
2 2016 and closed it sometime after that.

3 Q. Okay. So you wrote, if you see, this
4 email on July 17, 2016. Was that before closing?

5 A. Yes, it was.

6 Q. Was that after signing contract?

7 A. I would have to read the email to refresh
8 my memory.

9 Q. Please do.

10 (Witness reviewing document.)

11 A. Based on reading this email, that would
12 appear to be before we signed the contract.

13 Q. And you wrote to Mr. Narayan, in that
14 email we -- I just pointed you to, Thanks for the
15 models. These models make the decision to walk very
16 difficult.

17 What did you mean by making "the decision
18 to walk very difficult"?

19 A. I don't know. I'd have to review the
20 email and the attachments.

21 Q. And you have no recollection of that,
22 sitting here today?

23 A. I don't have any recollection of this
24 email.

25 Q. If you were using the word "walk," do you

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1 have an understanding of walk from what?

2 A. My understanding would be walk from a
3 transaction.

4 Q. Okay. You continue, I had a long
5 conversation with Ludwig earlier today about our
6 post-investment plans. Post closing, Thomas Unger
7 and two of his former colleagues will immediately
8 undertake a consulting assignment to identify areas
9 of improvement.

10 Does that refresh your recollection that
11 Mr. Unger and two of his colleagues were going to
12 immediately undertake consulting agreement to find
13 areas of improvement after the Schur acquisition?

14 MR. LEON: Object to form.

15 A. My -- my recollection is based only on
16 reading this email.

17 Q. So you -- I just want to get your
18 independent memory.

19 You -- you recall that you were involved
20 in bringing Mr. Unger on, immediately after the
21 acquisition, as a consultant for Schur. Correct?

22 A. Correct.

23 Q. And this document that you wrote the
24 portion, says, And two of his former colleagues.

25 Having read it and having talked about it

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1 for a bit, do you have any recollection of who you
2 meant when you said "two of his former colleagues"
3 when you wrote this email?

4 MR. LEON: Objection. Asked and answered.

5 A. I do not.

6 Q. Was Mr. Goldberg involved in the decision
7 to bring on Mr. Unger?

8 A. Yes, he was.

9 Q. And what was his role in that decision?

10 A. He would have had to approve the final
11 decision to hire him.

12 Q. Who hired him?

13 A. I believe he was hired by, if I recall,
14 Lindsay Goldberg Europe or Vogel.

15 Q. And prior to that hiring, you and
16 Mr. Goldberg met with Mr. Unger. Is that right?

17 A. I recall that I met with Mr. Unger. I do
18 not know if Mr. Goldberg met with him.

19 Q. But it was -- Mr. Goldberg ultimately
20 approved the hiring of Mr. Unger. Correct?

21 A. I'm not certain of that.

22 Q. Well, you -- I think you just said that
23 Mr. Goldberg would have had to approve the hiring of
24 Mr. Unger. What did I miss?

25 A. I -- I don't --

1 MR. LEON: Objection.

2 A. I -- I -- I can only read the email that's
3 here.

4 Q. For the year 2016, how did Schur perform
5 as an investment made by Lindsay Goldberg?

6 MR. LEON: Object to form.

7 A. On what metrics?

8 Q. Well, was the performance weaker than
9 expected?

10 A. I believe it was.

11 Q. And how so? On what metrics was it weaker
12 than expected?

13 A. I recall that it was weaker on financial
14 metrics.

15 Q. And what financial metrics?

16 A. I recall that its revenues and EBITDA were
17 less than expected.

18 Q. Did you yourself, following receiving
19 those results, undertake to examine Schur's capital
20 expenditures?

21 A. I don't recall.

22 Q. When I said "capital expenditures," do you
23 have an understanding what I mean?

24 A. I believe so.

25 Q. What do you understand that term to mean?

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1 MR. ROSENBAUM: This is 10. Yeah, we'll
2 just rename it.

3 Q. So I'm -- I'm now showing you what I
4 thought I had -- was showing you before, which is an
5 email, with attachments, from Mr. Ludwig to you,
6 dated 15 December 2016. And it says, For meeting
7 Monday budget Schur.

8 Is that right?

9 A. I see that email.

10 Q. Okay. And if you turn all the way in to
11 page, in the bottom right-hand corner, 156, it's LG
12 with 5 zeros in front of it.

13 Take your time.

14 A. 156, you said?

15 Q. 156 -- starting on 156.

16 Are you there?

17 Okay.

18 A. I am.

19 Q. And 155, just before that, is the budget
20 for 2017. Correct?

21 A. That's what it says, correct.

22 Q. And so the -- the following pages, to your
23 understanding, are that budget. Fair?

24 MR. LEON: Object to form.

25 A. My understanding, it's a presentation on

1 this topic.

2 Q. If you go to page 157, the bottom right,
3 it says, under the heading "Main Topics of Business
4 Year 2016."

5 Let me know when you're there.

6 A. I'm there.

7 Q. Okay. Weaker financial performance of
8 SF Group mainly due to disappointing sales situation
9 in food markets, and significant productivity,
10 quality, and on-time delivery problems at SFF.

11 You received this document, correct?

12 A. Based on the email, I did.

13 Q. Yeah. And you received this before you
14 wrote the email that we identified as Dees 9, dated
15 January 3 and January 4, 2017, correct?

16 A. If I look at the two emails, yes.

17 Q. Okay. So you were aware, prior to writing
18 the email marked as Dees 9, that -- and we will get
19 a little further into this, that Schur's performance
20 was weaker mainly due to disappointing sale -- sales
21 situation, as it says, correct?

22 MR. LEON: Object to form.

23 A. I'm aware of what was written here.

24 Q. And you were aware of then, not now. I'm
25 asking you at the time you wrote Dees 9, in January,

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1 What does "NWC" mean?

2 A. Net working capital.

3 Q. It is very hard to compare the performance
4 because they change the budget so often. I want to
5 analyze the size and causes of variance on a plant
6 level.

7 Did you undertake that project following
8 this email?

9 A. I don't recall if we did.

10 Q. Were you ever told you didn't have access
11 to the information for that project?

12 A. I don't recall being told that.

13 Q. And when you use "capex" in that
14 statement, it's the definition that you and I
15 discussed earlier, correct?

16 A. It's a shortened term for "capital
17 expenditures." It wasn't a detailed explanation.

18 Q. You -- Mr. Narayan responded to you and
19 then you responded to him, in the top. Let me know
20 when you're there.

21 A. I'm there.

22 Q. You said you spoke to Thomas that day.
23 That would be Thomas Unger or Thomas Ludwig?

24 A. As I am reading the email today, it would
25 likely be Thomas Ludwig.

1 Q. And you continued, He said that he will go
2 to Vienna next week to deliver the news that Markus
3 will be replaced by the Constantia person.

4 Who is "Markus"?

5 A. My recollection is that he was the CFO at
6 the time.

7 Q. And who is the "Constantia person" being
8 referred to here?

9 A. My recollection is that's Michael
10 Schernthaner.

11 Q. So as of January 4, 2017, you and
12 Thomas -- you think Ludwig -- had decided to replace
13 the prior CFO with a new CFO at Schur. Fair?

14 A. Yes.

15 Q. You continue, We are not happy with Jakob,
16 and he needs to stop talking about M&A.

17 That's Jakob Mosser?

18 A. Yes.

19 Q. Okay. So within a few months of the
20 acquisition, you and Thomas Ludwig were not happy
21 with Jakob Mosser, correct?

22 A. Correct.

23 Q. And I take it that was because of the
24 weaker-than-expected performance for 2016. Fair?

25 MR. LEON: Object to form.

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1 A. I recall that was one of the reasons.

2 Q. Were there other reasons?

3 A. As indicated in the email, he wanted to
4 continue to acquire companies.

5 Q. And that was not something that you wanted
6 to do?

7 A. We were unhappy with the financial
8 performance and we wanted him to focus on the
9 improvement.

10 Q. And you continue then, Thomas Unger will
11 join the LGV -- will join LGV and the Schur board.

12 Does that refresh your memory at all as to
13 when Mr. Unger joined the advisory board for Schur?

14 A. It refreshes my memory about the
15 approximate time.

16 Q. Okay. Did Mr. Unger replace Mr. Vogel on
17 the board after this, or did they sit on the board
18 together at any point?

19 A. I don't recall.

20 Q. Why did you and Mr. Ludwig decide to
21 replace the CFO at Schur?

22 A. I don't -- I don't recall the details.

23 Q. We discussed the term "EBITDA" earlier.
24 What is "EBITDA"?

25 A. EBITDA is earnings before interest, taxes,

1 depreciation, and amortization.

2 Q. What is it used for in Lindsay Goldberg's
3 business?

4 MR. LEON: Object to form.

5 A. It's one of the financial metrics to be
6 considered when reviewing a business.

7 (Email dated June 30, 2017, from Mr. Dees
8 to Mr. Narayan was marked Dees Exhibit 11 for
9 identification, as of this date.)

10 Q. I'm showing you what's been marked as Dees
11 11 for identification. It's an email dated June 30,
12 2017, from you, again, to Mr. Narayan.

13 And you wrote, We are likely terminating
14 Jakob on Monday.

15 The "we" was Schur, correct?

16 A. Yes.

17 Q. And does this refresh your recollection
18 that Jakob Mosser was terminated as opposed to him
19 resigning?

20 A. Yes, it does.

21 Q. So if I understand it correctly, you and
22 Mr. Ludwig decided -- decided to fire Mr. Mosser.
23 Fair?

24 A. The advisory board would have had to
25 make -- the advisory board would have had to made a

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1 decision to terminate him.

2 Q. And you were a member of the advisory
3 board?

4 A. I was.

5 Q. Okay. So you were part of a decision to
6 fire Mr. Mosser as of late June 2017, correct?

7 A. You are correct.

8 Q. There was no person lined up with the
9 title CEO immediately after Mr. Mosser's firing. Do
10 I have that right?

11 A. I don't recall that we did.

12 Q. But from that point forward Mr. Unger
13 served as operating CEO for Schur until
14 Mr. Schernthaner was appointed CEO in May of 2019,
15 correct?

16 A. That's not correct.

17 Q. Mr. Unger did serve as operating CEO of
18 Schur, correct?

19 A. I don't know what you mean by the term
20 "operating CEO."

21 Q. Did Lindsay Goldberg represent externally
22 that Mr. Unger served as operating CEO of Schur?

23 A. I don't recall what we represented or what
24 that term means.

25 (Email from Shannon Reeves to Vincent Ley,

1 with a copy to Mr. Dees, dated September 27,
2 2019 was marked Dees Exhibit 12 for
3 identification, as of this date.)

4 Q. I'm showing you what's been marked as
5 Dees 12 for identification. And if you look at the
6 email on top, it's from Shannon Reeves to a Vincent
7 Ley, with a copy to you, dated September 27, 2019.

8 Do I have that right?

9 A. Yes.

10 Q. Okay. And it says, Vince, please see
11 attached. The affiliate partner network
12 presentation was sent to an investor who requested
13 more information regarding our activity in Germany,
14 and I've also attached slides from last year's AGM
15 in case they are helpful.

16 What is the "affiliate partner network
17 presentation"?

18 A. It's the presentation -- I believe it's
19 the presentation that's been attached.

20 Q. And what is the "affiliate partner
21 network" in the context of Lindsay Goldberg's
22 business?

23 A. They are consultants who provide us advice
24 with respect to investments.

25 Q. And you see that this document says that,

1 The network presentation was sent to an investor who
2 was requesting more information regarding our
3 activity in Germany.

4 You understand that to be an investor -- a
5 Lindsay Goldberg investor, correct?

6 MR. LEON: Object to form.

7 A. I -- I see it's an investor. I don't know
8 what they're an investor in.

9 Q. Well, you were cc'd on this email, right?

10 A. Yes, I was.

11 Q. Would you understand, as a general matter,
12 the reference to "investor" to mean an investor in
13 the Lindsay Goldberg fund as general matter?

14 MR. LEON: Objection. Speculation. Asked
15 and answered.

16 A. It could also be a prospective investor of
17 the fund.

18 Q. In any event, you -- you would agree
19 that -- that information provided to investors is
20 important, right?

21 A. I don't want to make any speculation about
22 this information.

23 Q. Would you agree with me that
24 information -- it's important that information
25 provided to Lindsay Goldberg investors or

1 prospective investors be accurate?

2 A. I think it's -- we have certain
3 obligations with what we send to investors.

4 Q. And do you attempt to provide investors
5 with accurate information as a matter of practice at
6 Lindsay Goldberg?

7 A. As a matter of practice, I intend to
8 provide accurate information.

9 Q. Let's go to page 36197, Case Study Schur
10 Flexibles. You see that?

11 A. I see.

12 Q. Do you know who prepared this page?

13 A. I do not.

14 Q. But you expect it would be your team,
15 correct?

16 A. I expect it would be someone at
17 Lindsay Goldberg.

18 Q. Someone at Lindsay Goldberg with knowledge
19 of the Schur Flexibles investment would have
20 prepared this. Correct?

21 MR. LEON: Object to form.

22 A. I expect it would be someone at
23 Lindsay Goldberg. I do not know who did it or the
24 level --

25 Q. So --

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1 A. -- of knowledge they had.

2 Q. -- you were a partner at Lindsay Goldberg
3 as of this time, right?

4 A. Yes.

5 Q. You were on the investment committee,
6 right?

7 A. Yes.

8 Q. And you were the deal team lead for the
9 acquisition of Schur Flexibles. Correct?

10 A. Correct.

11 Q. Would you expect someone at
12 Lindsay Goldberg with knowledge of the Schur
13 investment to have prepared the information on the
14 page that we're both looking at? Yes or no?

15 MR. LEON: Objection. Asked and answered.

16 You don't have to change your answer just
17 because he's trying to bully you.

18 MR. ROSENBAUM: This is -- this is
19 entirely a speaking objection, Eric. Entirely.
20 You're coaching. You're -- it's -- it's
21 obvious, and we'll -- we'll just send it in to
22 Judge Figueredo if you continue to do it.

23 MR. LEON: Do what you need to do.

24 MR. ROSENBAUM: Can you read back the
25 question, and I'd like an answer to it.

1 (The record was read back.)

2 A. I do not know who prepared this page.

3 Q. That wasn't my question.

4 Is it your expectation that someone with
5 knowledge of the Schur investment prepared this
6 page, regardless of who it was?

7 A. Any person preparing it needed some
8 information to prepare this.

9 Q. And where would that information have come
10 from?

11 MR. LEON: Objection.

12 A. It would depend upon the statements.

13 Q. Okay. So, if you look under the heading,
14 "Management/Organizational Changes."

15 It says, In July 2017, Thomas Unger was
16 appointed chairman of Schur.

17 That was a correct statement. Right?

18 A. I don't -- I can't confirm the date.

19 Q. But it was correct that in 2017, Mr. Unger
20 was appointed chairman of Schur. Correct?

21 A. I believe so.

22 Q. And in addition to joining
23 Lindsay Goldberg's German affiliate partner team in
24 February 2017, it states, Mr. Unger also served as
25 operating CEO of Schur until May 2019.

MM

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1 Is that information presented to your
2 investors accurate?

3 A. I don't know what an operating CEO is.

4 Q. But you -- you -- you don't dispute that
5 Lindsay Goldberg told the affiliate partner network
6 that Mr. Unger served as operating CEO of Schur
7 until May 2019. Correct?

8 A. I can't dispute what was written -- I
9 can't dispute that this presentation was sent to the
10 people that it was referred to be sending over.

11 Q. And you don't dispute that it was also
12 sent to an investor who requested more information
13 regarding your activity in Germany. Correct?

14 A. My knowledge is only what's written here
15 in this email.

16 Q. But you don't also dispute that you were
17 cc'd, at the time of this email, with the attachment
18 to the presentation. Correct?

19 A. I can't dispute the existence of this
20 email that I -- in that I was cc'd.

21 Q. So you believe you received the email and
22 the attachment. Right?

23 A. I believe I did.

24 Q. And you believe, therefore, you received
25 the email and attachment that was sent outside the

1 firm, that represented that Mr. Unger also served as
2 operating CEO of Schur until May of 2019. Correct?

3 A. I can't disagree that this sentence was in
4 this presentation.

5 Q. And you were on the advisory board of
6 Schur at the time that this presentation was sent
7 outside the firm. Correct?

8 A. Yes.

9 Q. Okay. And so now, you're sitting here
10 telling me you have no idea what an operating
11 CEO is.

12 A. I have no idea what an operating CEO is.

13 Q. Why was Lindsay Goldberg telling the
14 affiliate partner network that Mr. Unger was the
15 operating CEO?

16 MR. LEON: Object to form.

17 A. I don't know.

18 Q. Do you believe that to be a false
19 statement?

20 A. Yes.

21 MR. LEON: Object to form.

22 Q. So you believe that Lindsay Goldberg
23 provided a false statement to the affiliate partner
24 network concerning Mr. Unger. Do I have that right?

25 A. I don't know what an operating CEO is.

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1 Q. Yeah, but you just said it was false.

2 So -- so you believe it was false.

3 A. Because I don't know what it is.

4 Q. Well, it's different -- different.

5 A. Okay. Then I was incorrect. I don't know
6 what an operating CEO is.

7 Q. Do you know what the word "operating"
8 means?

9 A. Yes.

10 Q. What does it mean?

11 A. It means you're doing something.
12 You're -- you're making something happen.

13 Q. Okay. And you understand what "CEO"
14 means.

15 A. I do.

16 Q. Okay. So you understand that "operating"
17 before "CEO" means you're doing something. Correct?

18 MR. LEON: Object to form.

19 Q. Just your understanding of the English
20 language. I'm using -- I'm going to -- you
21 understand that the word "operating" means doing
22 something, correct? You just said that.

23 A. Yes.

24 Q. Okay. And you understand what a CEO is.
25 Right?

1 A. Yes.

2 Q. What's the CEO?

3 A. Chief executive officer.

4 Q. So "operating" before "CEO," to your
5 understanding of the English language means, you're
6 doing the function of CEO. Fair?

7 Your understanding of the English
8 language.

9 A. My -- I have never seen these two words
10 together.

11 Q. Well, you are now, and you were cc'd on
12 this presentation. So now seeing them now, your
13 understanding of the English language, "operating"
14 means doing something, correct?

15 A. Yes.

16 Q. CEO means --

17 MR. LEON: Form.

18 Q. -- chief executive officer, right?

19 A. Yes.

20 Q. Okay.

21 We -- we may have covered this earlier.
22 But did -- do you recall when Mr. Schernthaner
23 joined Schur as CFO?

24 A. I do not.

25 Q. I believe it, though, was in 2017?

MS

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1 A. Sounds right.

2 Q. Okay.

3 And at the time Mr. Schernthaner joined
4 Schur, Schur was on the brink of insolvency,
5 correct?

6 A. I don't recall that.

7 Q. And he was the CFO, right?

8 A. Sorry, could you repeat your question?

9 Q. Mr. Schernthaner was the CFO of Schur.

10 A. At what time?

11 Q. In 2017.

12 A. I recall at some point in 2017, he was.

13 Q. And you would expect the CFO of Schur to
14 understand its financial condition. Right?

15 A. I would expect that.

16 Q. So you'd expect Mr. Schernthaner to know
17 whether Schur was on the brink of insolvency, in his
18 capacity as CFO. Right?

19 A. I don't know at what -- when he was CFO,
20 he would be.

21 Q. So if Mr. Schernthaner told the Austrian
22 prosecutor that when he joined the company in 2017,
23 Schur was on the brink of insolvency, you would have
24 no reason to dispute that as an advisory board
25 member, right?

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1 knowledge he had at the time.

2 Q. I'm not asking you about his knowledge.

3 I'm asking you about your expectation of a CFO.

4 Is it your expectation, sitting on the
5 board of somewhere between seven and ten companies,
6 and being a private equity professional, that the
7 CFO of a company that -- that your firm is involved
8 with would know whether that company is insolvent or
9 not?

10 MR. LEON: Object to form.

11 A. I expect that they would.

12 Q. Were you then, following the termination
13 of Mr. Mosser, involved in the hiring of another CEO
14 at Schur?

15 A. I vaguely recall that I was.

16 Q. Okay. Was that a Mr. Kühn?

17 A. I recall that that was his name.

18 Q. Okay. And what was your role in the
19 hiring of Mr. Kühn?

20 A. I don't recall my role.

21 Q. Did you interview him?

22 A. I can't recall.

23 Q. How long was Mr. Kühn with the company?

24 A. I don't recall exactly.

25 Q. Do you recall that it was a relatively

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1 A. It was -- there is a meeting on Monday of
2 the partners to discuss investments, and this was
3 likely a presentation for that.

4 Q. Partners in -- in what?

5 A. Partners what?

6 Q. Partners in what?

7 A. Partners at Lindsay Goldberg.

8 Q. Okay. And was Mr. Ludwig a partner at
9 Lindsay Goldberg?

10 A. No.

11 Q. Did the partner meeting take place among
12 both Lindsay Goldberg and Lindsay Goldberg Vogel or
13 Europe personnel?

14 A. The partner meeting was only for
15 Lindsay Goldberg partners. If there were specific
16 topics, that they may have participated in part of
17 it.

18 Q. I see.

19 So if you -- if you turn in to page
20 LG 00024285 and 24284, so there's two pages I'm
21 going to refer you to together. We can start on
22 24284.

23 So this refers to Thorsten Kühn, with the
24 position CEO, joining, I take it, April 1, 2018; is
25 that correct?

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1 A. Based on reading this, correct.

2 Q. And his bio is on the next page?

3 A. Yes, it is.

4 Q. And it identifies a Walter Ometto as
5 interim CSO and then Friedrich Humer as CSO. Do you
6 see that? I'm on page 24284.

7 A. Yes, I see that.

8 Q. What is -- what is the function of a CSO
9 at Schur?

10 A. As I recall, they were the chief sales
11 officer.

12 Q. Were you involved in bringing Mr. Humer
13 in?

14 A. I don't recall that I was.

15 Q. Okay. Did you meet with Mr. Humer before
16 he was hired?

17 A. I don't recall that I did.

18 Q. Whose decision was it, then, to bring on
19 Mr. Humer?

20 A. I don't recall whose decision it was.

21 Q. Do you have any reason to doubt that
22 Mr. Kühn started with the -- with Schur in April of
23 2018?

24 A. Based on reading this, I have no reason to
25 doubt it.

1 Q. And by July of 2018, you were involved in
2 the decision to terminate Mr. Kühn, correct?

3 A. I don't recall the specific -- the
4 specifics of being involved in the discussion on
5 that.

6 Q. So is it your testimony that you were not
7 involved in the discussion, or you just don't
8 remember being in the discussion?

9 A. I just don't remember.

10 MR. LEON: After this --

11 MR. ROSENBAUM: We can do it now.

12 MR. LEON: That's fine.

13 MR. ROSENBAUM: I'll have maybe one more
14 after this.

15 (Email chain, first email from Mr. Dees to
16 Mr. Narayan, was marked Dees Exhibit 14 for
17 identification, as of this date.)

18 Q. Showing you what's been marked as Dees 14
19 for identification.

20 MR. LEON: Take your time and review it.

21 (Witness reviewing document.)

22 Q. Have you read it?

23 A. Yes.

24 Q. Okay. This is -- starts with an email
25 from Rohan Narayan to you, it appears; is that

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1 formal role. He's the chairman, as we talked about,
2 of the advisory board.

3 Q. But you put "executive" in front of that,
4 right?

5 A. That is an in -- informal statement.
6 There's no actual role as an executive chairman.

7 Q. But your -- your informal understanding
8 was that he was going to step back into an executive
9 chairman role, correct?

10 A. That's what I wrote there.

11 Q. And you then continue, We will be
12 terminating the new CEO.

13 There you meant Mr. Kühn, right?

14 A. As I recall, yes, I did.

15 Q. You -- you end that email by saying, We
16 may not search for a new CEO as we are focused on
17 pushing for an exit in late 2019/early 2020, and new
18 CEO will likely slow this down.

19 So when you said "exit in late 2019/early
20 2020," you meant exit from the Schur investment? Do
21 I have that right?

22 A. Yes, you do.

23 Q. And that would be a sale typically; is
24 that right?

25 A. It would typically -- typically be a sale.

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1 Q. Mr. Narayan responded to you, and then you
2 responded to him in the top email of the chain. You
3 see that?

4 A. I do.

5 Q. Okay. And in part here you're talking
6 about a financing transaction. Do I have that
7 right?

8 A. Yes, you are -- yes, you do.

9 Q. What financing transaction are you talking
10 about?

11 A. As I recall, it was a financing
12 transaction to replace some of the debt and perhaps
13 increase the debt.

14 Q. You -- you write, I think that on the
15 financing Michael is playing no role.

16 What -- what "Michael" are we talking
17 about?

18 A. I -- I can't -- I don't know exactly what
19 Michael I'm talking about there. There's a lot of
20 Michaels.

21 Q. So you -- you just don't know?

22 A. I -- I don't recall which one.

23 Q. If you look in -- well, let me -- it's not
24 you, right? I -- I --

25 A. It's not me.

1 Q. -- I do agree with you, there are a lot of
2 Michaels, so I -- it's hard.

3 But if you look down at Mr. Narayan's
4 email to you, he refers to a call with "Michael S."
5 Do you understand that to be Michael Schernthaner?

6 A. Yes, I do.

7 Q. Okay. Is it fair then to also assume that
8 when you were talking about a "Michael," you
9 probably meant Michael Schernthaner?

10 A. That's a fair assumption.

11 Q. And is it consistent with your
12 recollection that Michael Schernthaner was playing
13 no role in the refinancing?

14 A. My only recollection on that specific
15 topic is what I wrote here.

16 Q. And what you wrote is: Paul is running
17 this.

18 There you meant Paul Pruss?

19 A. Yes.

20 Q. And in -- you have some bullets under
21 that, then you continue, I think he is implicitly
22 communicating two messages. First, it might be
23 harder to convince lenders of our pro forma EBITDA.

24 So that was a message that you thought
25 Mr. Pruss was implicitly communicating?

1 2019/early 2020 --

2 MR. LEON: Object to form.

3 Q. -- correct?

4 A. That -- that's what the sentence says.

5 Q. So that was the plan as of July 2018, to
6 exit by late 2019 or early 2020, correct?

7 A. As of the date and time of the email that
8 was my view of the plan.

9 Q. You then conclude the -- the email talking
10 about not knowing the reasons for Mr. Kühn's
11 departure, right?

12 A. That's what it says.

13 Q. And then your last sentence is, I don't
14 think that Michael S. was helpful.

15 That's Michael Schernthaner, right?

16 A. Yes.

17 Q. Michael -- you don't think Michael
18 Schernthaner was helpful with what?

19 A. I really don't know. I just would be
20 making inferences based on the language here.

21 Q. Well, you wrote the language. What is
22 your --

23 A. I acknowledge I wrote the language. I --

24 Q. Okay. Well, my inference, and you can
25 then tell me if you agree with it, is that you

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1 don't -- you didn't think Michael Schernthaner was
2 helpful in the integration of Mr. Kühn as CEO. Is
3 that fair?

4 MR. LEON: Object to form.

5 A. I think that would be making too much of
6 an inference. He was somehow not helpful --

7 Q. And you don't remember --

8 A. -- the CEO --

9 Q. -- why?

10 A. I do not remember why.

11 Q. And Mr. Kühn was terminated as of
12 August 6, 2018; is that right?

13 A. I don't recall the date.

14 (Email from Mr. Unger to Mr. Dees, dated
15 August 3, 2018, with an attached press release,
16 was marked Dees Exhibit 15 for identification,
17 as of this date.)

18 Q. I'm showing you Dees 15, which is an email
19 from Mr. Unger to you, dated August 3, 2018, with an
20 attached press release. You see that?

21 A. I see that.

22 Q. And the first paragraph of the appended
23 press release, it says, Thorsten Kühn, 45, CEO of
24 the Schur Flexibles group since April 2018 will be
25 withdrawing from the company to take up new tasks.

1 Does that refresh your memory that by
2 early August, Mr. Kühn had been terminated from
3 Schur?

4 A. It refreshes my memory that by early
5 August, he was no longer the CEO.

6 MR. ROSENBAUM: We can take a break.

7 THE VIDEOGRAPHER: Time right now is
8 3:43 p.m. We're off the record.

9 (A recess was taken from 3:43 to 4:02.)

10 THE VIDEOGRAPHER: Time right now is
11 4:02 p.m. We're back on the record.

12 Q. Mr. Dees, we -- we had talked previously
13 about an individual by the name of Michael Fischkin.
14 And you don't recall his title with Schur. Do I
15 have that right?

16 A. I do not recall.

17 Q. But you do recall that he was involved
18 with finance at Schur. Correct?

19 A. Yes.

20 Q. After Mr. Schernthaner was elevated from
21 CFO to CEO in May of 2019, did Schur have a CFO?

22 A. I don't recall if we did.

23 (Email chain with attachment, with top
24 email from Mr. Unger to Mr. Dees dated June 4,
25 2019, was marked Dees Exhibit 16 for